



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 21, 1995

Mr. Rick Ybarra
Open Records Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR95-1570

Dear Mr. Ybarra:

The Office of the Attorney General (the "OAG") asks whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. You assert that the requested information is excepted from required public disclosure under sections 552.101, 552.103, 552.108, 552.110, and 552.111 of the Government Code. Your request was assigned ID# 33576.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

The OAG received the request for information on April 12, 1995. We did not receive a request for an open records decision until May 9, 1995. Accordingly, we will not consider the discretionary exceptions you raised. We will, however, consider the applicability of sections 552.101 and 552.110 of the Government Code.

Section 552.110 excepts "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Pursuant to section 552.305(b) of the Government Code, this office notified KUVVM-23, Univision of the third party request for information from the OAG and offered the company an opportunity to address the availability of the records relating to it. We have received no response from KUVVM-23, Univision. Accordingly, you may not withhold the requested information under section 552.110 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that the documents are confidential pursuant to the Deceptive Trade Practices-Consumer Protection Act, subchapter E of the Business and Commerce Code.

Section 17.61(f) of the Business and Commerce Code, which allows the consumer protection division to issue a civil investigative demand (a "CID"), provides that "no documentary material produced pursuant to a demand under this section . . . shall be produced for inspection or copying by, nor shall its contents be disclosed to any person other than the authorized employee of the consumer protection division without the consent of the person who produced the material."¹ Accordingly, you must not release any information obtained pursuant to a demand under section 17.61. Moreover, you must redact any information that would reveal the contents of the information obtained pursuant to a demand under section 17.61.

However, there is some indication in the file that the information may have been produced pursuant to an "informal CID." If the informal CID was not served pursuant to section 17.61, the documents are not confidential under section 552.101 of the Government Code. We note that governmental bodies may not enter into agreements to keep information confidential except where specifically authorized to do so by statute. Open Records Decision Nos. 444 (1986), 437 (1986), 425 (1984), 414 (1983). Moreover, information is not confidential under the Open Records Act simply because the party submitting it anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987). Accordingly, only that information received pursuant to a CID served under section 17.61 may be withheld under section 552.101 of the Government Code. The remaining information must be released.²

¹Section 17.61(f) does provide, however, that the documents may be produced when ordered by a court for good cause shown.

²As a general rule, statutory confidentiality under section 552.101 requires express language making particular information confidential. Open Records Decision No. 478 (1987). Section 17.47(a) of the Business and Commerce Code, which is cited in the OAG's brief in this matter, does not contain such language.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", with a long, sweeping horizontal line extending to the right.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/LBC/rho

Ref: ID# 33576

Enclosures: Submitted documents

cc: Ms. Bridget L. O'Toole
Winstead Sechrest & Minick
910 Travis Building, Suite 1700
Houston, Texas 77002-6895
(w/o enclosures)